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United Nations Verification Mission in Guatemala: renewal of mandate

Report of the Secretary-General*

I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 55/177 of 19 December 2000, by which the Assembly authorized the renewal of the mandate of the United Nations Verification Mission in Guatemala (MINUGUA) originally set out in resolution 51/198 B of 27 March 1997, in order for the Mission to continue to verify compliance with the peace agreements signed between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG). By resolution 55/177, the General Assembly renewed the mandate of MINUGUA from 1 January to 31 December 2001 and requested me to submit to it at its fifty-sixth session an updated report and recommendations regarding the continuation of the peace-building phase after 31 December 2001.

2. On 14 September 2000, I submitted to the General Assembly my report recommending the renewal of the mandate of MINUGUA from 1 January until 31 December 2001 (A/55/389). In that report, in addition to informing the Assembly of the parties' request that the Mission maintain its presence in Guatemala until 2003, I presented a plan for gradually scaling down its operations until they concluded in 2003. At the same time, I recommended that the Mission continue and increase its liaison with the international community and the United Nations system, so that the United Nations agencies and programmes focus on the centrality of the peace agreements after the conclusion of the mandate of MINUGUA.

3. On 1 June 2001, I reported to the General Assembly on the status of the Guatemalan peace process through my sixth report on the verification of compliance with the peace agreements (A/55/973-S/2001/139). Subsequently, on 8 August 2001, I transmitted to the Assembly the Mission's twelfth report on human rights (A/56/273). The present report describes the progress made in 2001 and the remaining challenges. It also contains a number of recommendations for assisting the peace-building process and continuing the gradual scaling-down of operations.

* The present report was submitted after the 3 July deadline in order to include information that was not available by the designated date.

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II. Background

4. The timetable for the implementation of the commitments made in the peace agreements, as contained in the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements (A/51/796-S/1997/114, annex I), expired in December 2000. Since much of the peace agenda remained outstanding, the Commission to Follow up the Implementation of the Peace Agreements began the process of rescheduling pending commitments which culminated in the implementation timetable for 2000-2004 (see A/55/389, para. 40).

5. The ceremony at which the rescheduled implementation timetable for 2000-2004 was signed and presented took place on 12 December 2000. The President of the Republic, the President of the Congress and the President of the judiciary signed as honorary witnesses and stated that full implementation of the new timetable, through the combined efforts of the State and civil society, would give considerable impetus to Guatemala's democratic development. I am encouraged by this renewed commitment to peace, this time expressed by the national authorities at the highest level.

6. Since the rescheduling, the peace process has made little progress. In the first three months of the year, growing social and political polarization and, especially in the country's interior, a climate of heightened conflict began to be observed. Another key development in that period was the Government's presentation of a set of fiscal measures which aroused considerable opposition in some sectors of society. In June 2001, a mass escape from Escuintla maximum security prison heightened the public's feelings of vulnerability. The Government declared a "state of alert" throughout the country, for which provision is made in the Constitution of Guatemala "in the event of invasion of the national territory, serious disturbance of the peace, activities against the security of the State or public disaster". The Mission expressed its concern at the fact that the justification given for this measure, which restricted the enjoyment of important rights, bore little relation to the relevant provisions of the Constitution.

7. In July, I asked my Chef de Cabinet to visit Guatemala to convey to the State authorities, representatives of organizations of civil society and the population at large the continuing support of the United Nations for the Guatemalan peace process. During his visit, he found that, despite considerable polarization, Guatemalans remain willing to settle their differences through dialogue, to make progress in complying with the peace agreements and to reach the consensus necessary for the consolidation of peace.

III. Furthering the consolidation of the peace-building process in Guatemala

8. During 2001, MINUGUA continued to carry out its mandate of verifying compliance with all the peace agreements, as well as its good offices, public information and technical assistance activities. At the same time, as recommended by the General Assembly, the process of incorporating the substance of the peace agreements into the technical and financial assistance programmes and projects of the United Nations funds and programmes, in the context of the United Nations Development Assistance Framework for Guatemala, has continued. The operational aspects of developing this process are expanded upon in the section on the structure and staffing of the Mission.

9. Early in the year, in view of the standstill in the implementation of the commitments made in the peace agreements, the Follow-up Commission defined a reactivation strategy which involved preparing and presenting priority agendas for the main sectors of State activity with a view to the implementation in 2001 of important pending commitments. As indicated by the parties, the peace agreements contain a broad range of commitments whose main components are: resettlement, integration and compensation; comprehensive human development; sustainable development of production; and modernization of the democratic State. The agenda for the executive branch includes important commitments relating to national reconciliation, socio-economic aspects, public security and the armed forces, and human rights and justice. The agenda for the legislative branch suggests to the Congress of the Republic that it consider an important set of laws on participation, modernization of the State, the electoral system, human rights, indigenous peoples' rights, social development and other initiatives in the context of the Fiscal Pact. Lastly, the agenda for the judicial system suggests giving priority to the drafting of a State policy against crime and to expanding access to justice for the entire population.

10. In this context, social sectors and members of the Government and the international community also began to consider a strategy that would promote the strengthening of democracy and the implementation of the peace agreements. To help arrive at a common denominator, based on the peace agreements, which broad sectors of the population could support, MINUGUA, at the request of the parties, conducted an extensive round of consultations which revealed a willingness on the part of sectors of society to work together on specific issues. The achievement of such consensus and the resulting fulfilment of such important commitments as those aimed at bringing about the structural changes necessary for sustainable social and productive development, public participation and strengthening of the political system and civilian power would be an opportunity to resume and advance the peace process and make it irreversible. The conclusion of agreements on specific issues between State actors and civil society would help ensure that the changes made prospered and became sustainable.

11. The recommendations in this report refer particularly to 2002, when important ongoing processes will have to be consolidated and others begun which, together, seek to make the peace process irreversible. In 2002, compliance with the rescheduled timetable for 2000-2004 will have to speed up and important reforms will have to go into effect, such as the amendments to the Elections and Political Parties Act which will govern the general elections to be held in 2003. It will also be necessary to consolidate the incorporation of the peace agenda in the agenda of the agencies and programmes of the United Nations system and to continue the gradual transfer of technical assistance and institution-building projects.

IV. Status of implementation of the peace agreements

12. As I have already said, much has been achieved but much fundamental work remains to be done. Ethnic discrimination, unequal job opportunities, gender inequality, the fact that large sectors of the population are still living in poverty and extreme poverty and inequalities in access to basic services are jeopardizing the achievements and sustainability of the peace process. Overcoming this situation is essential for ensuring peace and ending the climate of heightened conflict that still characterizes Guatemalan society.

13. During 2001, in a climate of polarization and heightened social conflict, the Mission had to provide increased support, facilitation and good offices at the request of the parties in order to exert a positive influence on the prevention and resolution of many local and even national conflicts. I note the recent establishment of the Presidential Office for Conflict Resolution, the function of which is to coordinate a comprehensive approach to multiple sources of tension which have varying causes, as well as the technical assistance which the Mission is providing to the Office. The latter's role will be to facilitate the activities of permanent State bodies, which bear primary responsibility for overcoming the structural causes of conflict.

14. Systematic, across-the-board impunity for crimes and human rights violations remains the principal obstacle to the enjoyment of those rights. Since 2000, there has been a significant increase in complaints of harassment and threats directed against individuals and entities working for the protection of human rights, as well as judicial officials and other persons involved in judicial proceedings. Such threats and harassment, which are also directed against the press and journalists, are often related to the investigation and trial of individuals with past or present ties to the State, suggesting that they may form part of a systematic campaign of intimidation. The failure to clear up such incidents and the impunity enjoyed by the perpetrators justify the climate of fear and the assumption that they are linked to persons and practices from the past. Another important aspect is that of the full exercise of freedom of expression and the building of a democratic society. Accordingly, it is also necessary to expand access to the media, especially for indigenous people, avoid media concentration and monopolies and safeguard the public's right to receive objective, unbiased information.

15. The most recent reports on the situation of human rights in Guatemala had commended the State's exemplary policy in that regard, the implementation of which had been spearheaded by the Presidential Human Rights Commission. The repeated changes in the Chairmanship of this Commission are therefore cause for concern and I hope that they do not represent a retreat from the human rights policy outlined when the current Government came to power.

16. The social spending targets established in the peace agreements have been met. However, there are

still major gaps in social development between the indigenous and non-indigenous population, between rural and urban areas and between women and men. Even though some indicators, such as life expectancy, maternal and infant mortality and literacy, have continued to improve, considerable efforts must still be made and the execution of social development projects must be substantially improved.

17. There are serious delays in fulfilling the commitments made in the Agreement on Identity and Rights of Indigenous Peoples (A/49/882-S/1995/256, annex). The work of the joint commissions has produced uneven results and several of them have encountered serious problems. It is essential that the Government immediately adopt a plan of work that will promote the implementation of this Agreement. MINUGUA, for its part, will have to step up significantly its verification, advisory and institution-building activities in this area.

18. In order to promote sustainable productive development and thereby overcome the structural causes of poverty, the peace agreements established the need to undertake legal, institutional and financial reforms. There has been progress in some specific areas, but the formulation of a policy of sustainable productive development and the building of institutions capable of promoting it have scarcely begun. One example of this situation is the failure to properly reactivate the development councils in their central role of formulating plans and strategies as a contribution to the design of a comprehensive development policy.

19. The initial phase of resettlement and demobilization has been completed, but the sustainable, equitable development of resettlement areas and the productive integration of uprooted and demobilized population groups is still facing serious constraints. The social and economic integration of these sectors, in conditions of safety, dignity and sustainability, is an issue of national importance. The commitment to develop and implement a comprehensive rural development policy that addresses the needs of the entire rural population living in poverty and extreme poverty has not been fulfilled.

20. At the national level, major forums for participation have emerged in connection with the design of some very specific public policies, such as fiscal policy and policies on educational reform, the advancement and development of women, culture and housing. However, the commitments to establish institutional mechanisms for social participation and to strengthen and properly reactivate existing ones such as the development councils have not been fulfilled. Such commitments will enable new forms of public oversight to be developed and will promote transparency in Government decision-making. At the same time, the failure to institutionalize the forums for indigenous peoples' participation at the municipal and departmental levels, combined with their limited involvement in decision-making, is increasing their marginalization. It is important to make progress in the recognition and institutionalization of indigenous peoples' forms of organization. Another key aspect is the removal of obstacles to the promotion of political participation, including access to documentation and the decentralization of voting centres.

21. It should be noted that the National Women's Forum promoted women's participation, developed an organized, recognized network at the national level and facilitated the establishment of several participation forums. At its fifty-fifth session, the United Nations General Assembly welcomed the establishment of a Presidential Secretariat for Women with advisory and public policy coordination functions. In that framework, consensus was reached on a national policy on women and an equal opportunity plan was developed. It is encouraging that the Government has approved the National Policy for the Advancement and Development of Guatemalan Women: Equal Opportunity Plan 2001-2006.

22. The peace agreements called for changes in the political and electoral system, through amendments to the Elections and Political Parties Act, that would strengthen the electoral system and increase public participation in order to enhance the legitimacy of public authority and consolidate representative democracy. Accordingly, implementation of the recently approved amendments to the Act will require careful planning to enable the next general elections to be held in accordance with the new legislation.

23. Greater and more rapid progress must be made in reforming the system of justice so that it serves the protection of human rights and the resolution of conflicts. To that end, it is essential to implement the recommendations of the Commission on the Strengthening of the Justice System and the Special Rapporteur on the independence of judges and lawyers. I am encouraged by the work being done by the

Commission for Monitoring and Supporting the Strengthening of the Justice System, which has become an important forum for dialogue between civil society and State institutions on such important issues as legislative amendments relating to court jurisdiction and the prison system, professionalization of judicial personnel, the budgetary situation of the justice sector and acts of social violence. The United Nations Development Programme, the Inter-American Development Bank, the United States Agency for International Development and other international cooperation agencies are currently supporting different components of the comprehensive programme for the strengthening of the justice system.

24. An evaluation of progress in the areas of security, police reform and transformation of the role of the armed forces shows that the fulfilment of these commitments is confronted with the challenges of a society in transition. The situation of insecurity and the limitations of the new National Civil Police have been factors in the continued involvement of the armed forces in public security tasks. As I have already said, this represents a setback in the demilitarization of public security and is not conducive to the strengthening of civilian power in general and the police in particular.

25. With regard to the commitments on the role of the armed forces in a democratic society, the results have been uneven. The rescheduling carried out by the Follow-up Commission and the creation of new forums for the exchange of information and technical assistance are encouraging developments which I hope will lead to the proper implementation of all the commitments, particularly those concerning military intelligence and the replacement of the Presidential General Staff.

26. The pending legislative agenda includes such important laws as the act establishing the armed forces, the laws regulating the oversight of State intelligence bodies, the civic service act, the act regulating private security companies, the arms and munitions act and the public order act. In other areas, it is essential to make progress on: the comprehensive amendment of the Penal Code, including the typification of sexual discrimination and sexual harassment as crimes; the amendments to the Municipal Code, the Development Councils Act and the Juvenile Code; and the drafting of a decentralization bill. The State's recent ratification of various human rights treaties, including the first Optional Protocol to the International Covenant on Civil and Political Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), and of the Inter-American Convention against Corruption is commendable, as is the adoption of amendments to the Labour Code aimed at bringing domestic labour law more closely into line with international labour law.

27. On a number of occasions, I have emphasized how important it is that the State mobilize domestic resources to confront the challenges of human development, State modernization and sustainable productive development. Recently, the Congress of the Republic adopted a set of legislative amendments aimed at meeting the target rescheduled for 2002, of a tax burden of 12 per cent of gross domestic product. These amendments include increasing the value added tax and amending the Penal Code, the Code of Criminal Procedure and the Tax Code in order to penalize tax evasion. In this context, I reiterate the need for the Government to comply with all the provisions of the Fiscal Pact. This means moving ahead simultaneously on all the issues and actions envisaged in the Pact, both tax-related and otherwise, as well as pursuing economic recovery.

28. In order to fulfil its mandate of keeping the public informed of progress in the implementation of the peace agreements, the Mission prepared, issued and disseminated eight thematic verification reports on: exhumation procedures; commitments relating to rural development and natural resources; the situation of children and adolescents; the problem of lynchings; the climate of conflict; the participation of Guatemalan women; the situation of the National Civil Police; and the status of compliance with the Fiscal Pact. It is also preparing a weekly news bulletin and radio and television programmes on important aspects of the peace agreements. As part of the institution-building process, it is conducting training programmes on human rights, communication, democracy and development for teachers and journalists.

V. Structure and staffing of the Mission

29. In my 1 June 2001 report to the General Assembly (A/55/973), I reported on the

implementation during the first half of 2001 of my proposal for the gradual scaling back of MINUGUA operations. In December 2000, the first reduction was made, involving a 39-per-cent cut in the Mission's budget, and the reconfiguration of its presence in the country with 46 per cent fewer staff.

30. The reduction had a particular impact on the Mission's territorial deployment, bringing the number of its regional offices down from eight to six and its regional suboffices from five to four. In the case of the mobile teams, only one of the five envisaged for 2001 remained in operation and the staff assigned to the others were absorbed into the corresponding regional office or suboffice.

31. The Mission's new territorial deployment had an impact on its operational capacity and forced it to set priorities for its activities, especially verification and institution-building. Given the overall situation of the peace process, various sectors expressed concern about the possibility that MINUGUA would scale down its field presence still further. The main concern was that this would affects its ability to provide good offices in a continuing climate of heightened conflict.

32. During the period 2002-2003, the Mission will have to meet new challenges: signs that the human rights situation is not improving and in some cases has deteriorated; the growing climate of conflict in the country's interior; the need to give priority to verifying and promoting compliance with the Agreement on Identity and Rights of Indigenous Peoples; and the tasks of verifying the exercise of political rights and providing technical assistance in connection with the new electoral legislation that will govern the holding of the 2003 general elections.

33. Under the circumstances and in response to the justified concerns expressed by various sectors, I propose that the reduction envisaged for 2002 should not affect or alter the territorial deployment planned for 2001 and that all the mobile teams envisaged should be put into operation. Concomitantly, the regional offices will be reinforced by redeploying posts from MINUGUA headquarters. The functions assigned to the Field Coordinator will be reassumed by the Deputy Head of MINUGUA, assisted by a field coordination officer.

34. In 2001, MINUGUA headquarters was structured around four substantive areas: human rights; juridical affairs; socio-economic affairs, resettlement and integration; and public security and the armed forces. In 2002, the substantive areas will be: human rights; socio-economic affairs, resettlement and integration; and public security and the armed forces. The Human Rights section will take over the verification of the justice system and the Juridical Affairs section will cease to function. The Legal Adviser's functions will be assumed by the Coordinator of the Transition Group (see para. 41 below). The remaining sections will stay the same as in 2001. The Public Information Office will continue its current functions but pay more attention to the need to provide information on the peace process to rural areas and to the indigenous population in particular.

35. The new Human Rights and Justice section will be responsible for verifying compliance with all the commitments made under the Comprehensive Agreement on Human Rights with regard to the administration of justice, such as guaranteeing that judges and prosecutors will be free from pressures of any kind, that due process will be enforced and that the duty to investigate and punish crimes and human rights violations will be fulfilled. It will also verify the right to justice, in particular, indigenous people's access to justice in their own language. Lastly, it will coordinate with the United Nations system the monitoring of the overall process of reform and modernization of the administration of justice.

36. In 2001, the offices of the Police and Military Advisers were merged with the Public Security and Armed Forces section and the number of police and military personnel was reduced from 51 to 10 police observers and from 20 to 4 military liaison officers. The Mission had one police observer in each regional office and the remaining police observers were assigned to Mission headquarters. There will be the same number of staff in 2002, but some of the police and military personnel assigned to headquarters will be transferred to field offices.

37. Of the planned special units on cross-cutting themes — participation, indigenous affairs, women and decentralization — in the end only the women's unit and the indigenous affairs unit were set up. The women's unit will cease to function and its monitoring and institution-building tasks will be transferred to the United Nations system. However, the Socio-economic Affairs section will maintain a focal point on the agrarian situation who will work in close coordination with the whole Mission. It is particularly important to

ensure that a gender perspective is mainstreamed in the Mission's activities, especially in its verification of the formulation and execution of State public policy.

38. To step up the work being done in relation to the Agreement on Identity and Rights of Indigenous Peoples and the provision of conflict-resolution advisory services and to meet the new challenges posed by the electoral reform, the Indigenous Affairs unit will become an Indigenous Affairs Advisory Service and a new Conflict-Resolution and State Reform unit will be set up.

39. As a way of guaranteeing cooperation, in terms of both strategic guidelines and operational arrangements within the United Nations system, projects financed from the trust fund for peace in Guatemala have begun to be gradually transferred to United Nations agencies. In 1999, MINUGUA began to transfer the management of several of its projects to the United Nations Office for Project Services.

40. In order to continue the transfer process in their United Nations Development Assistance Framework, the Mission will transfer to the inter-agency system all projects relating to the peace agenda. This includes the projects for providing technical assistance to the National Civil Police, the project to support the prison school, the justice and multiculturalism project, the projects related to Santa Eulalia Centre for the Administration of Justice and the support projects in the fiscal, labour and agrarian areas. Nevertheless, for reasons inherent in its mandate, MINUGUA will continue to execute the Programme of Institutional Assistance for Legal Reform, through which technical advice on the legislative agenda for peace is channelled to the Congress of the Republic, and the Public Information and Social Participation project, through which the Mission carries out its mandate to keep the public informed.

41. To provide guidelines for the projects and ensure that the peace agenda is incorporated in activities of the agencies and programmes of the United Nations system in Guatemala, in anticipation of the Mission's eventual withdrawal, a Transition Group will be set up, reporting to the office of the head of MINUGUA and composed of officials appointed by my Special Representative and by the Resident Coordinator of the United Nations system for Operational Activities for Development. In 2002, the Transition Group will establish the policy guidelines for the projects being transferred to United Nations agencies and programmes. At the same time, the Transition Group Coordinator will be responsible for providing legal advice. This will make the transfer process and the gradual scaling-back of the Mission more coherent.

VI. Observations

42. The year 2002 will be decisive for progress in complying with the Guatemalan peace agreements. Substantive, sustained progress on the outstanding agenda is essential for overcoming the profound inequalities that still persist among the population and that are jeopardizing the achievements and sustainability of the peace process. It is also necessary to alternate the climate of heightened potential conflict that still characterizes Guatemalan society.

43. The timetable for 2000-2004 is a new challenge for the peace process. Decisive support for its implementation must spur the actions of government institutions, civil society and the international community. The United Nations once again expresses its wholehearted commitment to the Guatemalan peace process. Technical cooperation to support the institutions created under the peace process must continue and be expanded. All those institutions need strengthening, especially those in the country's interior, where the effects of peace need to be more visible and generate more participation.

44. At a time when the transformation of democratic institutions must be consolidated and the population needs to reap the benefits of a culture of peace, public authorities, the media and society as a whole must do their utmost to disseminate civic values and the values of peace, tolerance and dialogue as the basis for a new form of peaceful coexistence.

45. In general, a special effort must be made to build the capacities of national institutions for the protection and monitoring of human rights. In this new phase, the Office of the United Nations High Commissioner for Human Rights will have to consider how best to strengthen its presence in the country and continue supporting such institutions.

46. I am very encouraged by the Guatemalan Government's request that a meeting of the Consultative Group for Guatemala be convened in late 2001. That meeting will enable the international community to renew its commitments and coordinate

its actions in the framework of the revised timetable for the implementation of the peace agreements.

47. Based on the foregoing, I recommend that the General Assembly authorize the renewal of the mandate of MINUGUA from 1 January to 31 December 2002, subject to regular reports on compliance with and the implementation of the peace agreements, and that the Mission be given the necessary resources for its operations.